



PUBLIC NOTICE

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August 5, 2004

**Parties Asked to Refresh Record Regarding Reconsideration of Price Cap Performance Review for
Local Exchange Carriers Fourth Report and Order
and Access Charge Reform Second Report and Order**

CC Docket Nos. 94-1 and 96-262

COMMENTS DUE: 30 days after Federal Register publication of this Public Notice
REPLY COMMENTS DUE: 45 days after Federal Register publication of this Public Notice

Pursuant to the Commission's rules governing petitions for reconsideration,¹ the Wireline Competition Bureau (the Bureau) invites interested parties to update the record pertaining to petitions for reconsideration filed with respect to the *1997 Price Cap Review Order*.²

On May 21, 1997, the Commission released the *1997 Price Cap Review Order*, which established a 6.5 percent productivity-based X-factor and eliminated the sharing requirements in the Commission's price cap rules.³ Several parties filed petitions for reconsideration of that order. Since then the rules adopted in the *1997 Price Cap Review Order* have been the subject of both litigation and additional orders, including the *CALLS Order*.⁴ Issues raised in the pending petitions for reconsideration may therefore have become moot or irrelevant. As a result, it is not clear what issues arising out of the *1997 Price Cap Review Order*, if any, remain in dispute. Moreover, because the *CALLS Order* arose out of a voluntary proposal representing a large consensus in the industry, the earlier concerns raised by the petitions for reconsideration already may have been addressed. Finally, because the petitions for reconsideration were filed several years ago, the passage of time and intervening developments may have rendered the records developed by those petitions stale.

For these reasons, the Bureau requests that parties that filed petitions for reconsideration of the *1997 Price Cap Review Order* now file a supplemental notice indicating those issues that they still wish

¹ 47 C.F.R. § 1.106.

² *Price Cap Performance Review for Local Exchange Carriers, Access Charge Reform*, Fourth Report and Order in CC Docket No. 94-1 and Second Report and Order in CC Docket No. 96-262, 12 FCC Rcd 16642 (1997) (*1997 Price Cap Review Order*), *aff'd in part, rev'd in part sub nom. USTA v. FCC*, 188 F.3d 521 (D.C. Cir. 1999).

³ *1997 Price Cap Review Order*, 12 FCC Rcd at 16645-50.

⁴ *Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Low-Volume Long-Distance Users, Federal-State Joint Board on Universal Service*, Sixth Report and Order in CC Docket Nos. 96-262 and 94-1, Report and Order in CC Docket No. 99-249, Eleventh Report and Order in CC Docket No. 96-45, 15 FCC Rcd 12962 (2000) (*CALLS Order*).

to be reconsidered. In addition, parties may refresh the record with any new information or arguments that they believe to be relevant to deciding such issues. To the extent parties do not indicate an intent to pursue their respective petitions for reconsideration, the Commission will deem such petitions withdrawn and will dismiss them. The refreshed record will enable the Commission to undertake appropriate reconsideration of its price cap and access charge rules.

Pursuant to sections 1.415 and 1.419 of the Commission's rules,⁵ interested parties may file comments on or before **30 days after Federal Register publication of this Public Notice**, and reply comments on or before **45 days after Federal Register publication of this Public Notice**. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies.⁶ Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/cgb/ecfs/>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of the proceeding, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number, in this case, **CC Docket Nos. 94-1 and 96-262**. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form." A sample form and directions will be sent in reply. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail).

The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002.

- The filing hours at this location are 8:00 a.m. to 7:00 p.m.
- All hand deliveries must be held together with rubber bands or fasteners.
- Any envelopes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, D.C. 20554.

⁵ 47 C.F.R. §§ 1.415, 1.419.

⁶ See *Electronic Filing of Documents in Rulemaking Proceedings*, GC Docket No. 97-113, Report and Order, 13 FCC Rcd 11322 (1998).

All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, Room TW-A325, 445 12th Street, SW., Washington, DC 20554. Parties should also send a copy of their filings to Jennifer McKee, Pricing Policy Division, Wireline Competition Bureau, Federal Communications Commission, Room 5-A263, 445 12th Street, SW., Washington, DC 20554, or by e-mail to jennifer.mckee@fcc.gov. Parties shall also serve one copy with the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554, (202) 488-5300, or via e-mail to fcc@bcpiweb.com.

The original petitions for reconsideration filed by the parties in CC Docket Nos. 94-1 and 96-262 are available for public inspection and copying during business hours at the FCC Reference Information Center, Portals II, 445 12th Street SW., Room CY-A257, Washington, DC 20554. The documents may also be purchased from BCPI, telephone (202) 488-5300, facsimile (202) 488-5563, TTY (202) 488-5562, or by e-mail at fcc@bcpiweb.com.

This matter shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.⁷ Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one- or two-sentence description of the views and arguments presented generally is required.⁸ Other requirements pertaining to oral and written presentations are set forth in section 1.1206(b) of the Commission's rules.⁹

For further information, contact Jennifer McKee of the Pricing Policy Division, Wireline Competition Bureau at (202) 418-1530, or by e-mail at jennifer.mckee@fcc.gov.

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⁷ 47 C.F.R. § 1.1200 *et seq.*

⁸ *See* 47 C.F.R. § 1.1206(b)(2).

⁹ 47 C.F.R. § 1.1206(b).